

**BOARD OF APPEALS CASE NO. 4808**

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**BEFORE THE**

**APPLICANT: Keystone Homes at  
Spenceola Farms, Inc.**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to construct garden  
apartments higher than 45 feet tall in the  
R2/COS District; Willrich Court, Forest Hill**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 4/8/98 & 4/15/98**

**HEARING DATE: June 3, 1998**

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**Record: 4/10/98 & 4/17/98**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicant appeared before the Hearing Examiner requesting a variance pursuant to Section 267-11 of the Harford County Code ("Code") from the provisions of Section 267-36(B), Table VI, to permit garden apartment dwellings to have a maximum building height in excess of 45 feet and 3 stories, (45 feet and 4 stories proposed).

The subject property is owned by Spenceola/Bellvue, LLC and is identified as parcel No. 40, in Grid 1E on Tax Map 40. The parcel is zoned R2/COS.

Robert McGee, an expert builder and land developer, and President of Keystone Homes at Spenceola Farms, LLC, the Applicant, testified. He stated that the Applicant proposes to build 12 buildings containing 96 condominium garden apartment dwellings in Spenceola Farms, Section II, in Harford County. He explained that each building will have built-in garages and storage areas located in the basement of the building and elevators. He said that the proposed buildings are identical to existing 3 story condominium buildings which have been built by the Applicant previously in Harford County. The witness said that because a basement is defined as a story under the Zoning Code, the addition of a basement for a garage and storage transforms the building from 3 stories to 4 stories. However he said that the height of the proposed buildings will not exceed the permitted 45 foot height. He testified that the proposed buildings have exactly the same front and rear elevation as the existing buildings. He noted that only the side elevations have changed.

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**Mr. McGee testified that based on his market research, there is a real need for condominium buildings with these features, especially among senior citizens. He pointed out that elevators are expensive to install and maintain. Without providing a larger number of units over which to spread those costs, the homeowners cannot afford the dwellings. He stated that denial of the requested variance would cause practical difficulty in that without the variance, the proposed buildings cannot be constructed. The witness said he could not design a building with a built in garage, storage area and elevator and avoid the need for a variance. Mr. McGee also said that granting the variance would not cause any harm of any kind to anyone and would benefit the public by serving a segment of the population with a needed housing type.**

**Next testified Paul Muddiman, an expert in site plan design employed by Morris & Ritchie Associates, Inc. He stated that the subject property was surrounded on two sides by non tidal wetlands and the right of way of Maryland Route 23 on the third. He indicated that the subject property was ten to thirty feet lower in elevation than existing homes constructed on surrounding property. He indicated that as a result of these factors, no other areas of the subject property could be developed**

**Finally, Denis Canavan, an expert land planner testified. Mr. Canavan stated that in his opinion the subject property was unique based on the features described by Mr. Muddiman. The witness testified that denial of the variance would cause practical difficulty to the Applicant in that without the variance the proposed building could not be constructed. Furthermore, Mr. Canavan indicated that approval of the variance would not impair the purposes of the code or the public interest, would be consistent with the purpose of the Code and would not be substantially detrimental to adjoining properties. He stated the proposed buildings would be identical to existing buildings already constructed except for the side elevations. He noted that if the variance is granted the maximum building height would not be exceeded and it is only because the Code defines a basement as a story that the variance is necessary.**

**No protestants appeared in opposition to the Applicant's request.**

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**CONCLUSION:**

The Applicant is requesting a variance from the provisions of Section 267-36B, Table VI, to permit garden apartment dwellings to have a maximum building height greater than 45 feet or 3 stories (45 feet and 4 stories proposed)..

Section 267-11, of the Harford County Code provides:

“Variances from the provisions and requirements of this Part I may be granted if the Board finds that:

1. By reason of the uniqueness of the property or topographical conditions the literal enforcement of this Part I would result in practical difficulty or unreasonable hardship; and
2. The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part I or the public interest.”

Based on the testimony presented, the Hearing Examiner finds that the subject property is unique, given its location, shape, elevation and the presence of non tidal wetlands. Granting the variance to permit a fourth story would not adversely affect the adjoining property owners or the public interest, as the building height would not be increased, no increased density is achieved and only the side elevations of the building would change. The proposed buildings are virtually identical to condominium buildings already constructed in Harford County. It is only because the basement constitutes a fourth story under the Code that the variance is necessary.

Based on the evidence, it is the recommendation of the Hearing Examiner that the requested variance to allow 4 stories without exceeding the maximum allowable height of 45 feet be approved subject to the Applicant obtaining all necessary permits, approvals and inspections for the construction of the condominium units.

Date        JUNE 9, 1998

L. A. Hinderhofer  
Zoning Hearing Examiner